

**Enclosure 1**

**Federal Register Notice**

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-83]

[NRC-2007-0012]

David Lochbaum on Behalf of the Project on Government Oversight  
and the Union of Concerned Scientists

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Mr. David Lochbaum on behalf of the Project on Government Oversight (POGO) and the Union of Concerned Scientists (UCS) on February 23, 2007. The petitioner requested that the NRC amend its regulations governing domestic licensing of production and utilization facilities to require periodic demonstrations by applicable local, State, and Federal entities to ensure that nuclear power plants can be adequately protected against radiological sabotage by adversaries with capabilities that exceed those posed by the design basis threat (DBT).

DATES: The docket for the petition for rulemaking PRM-50-83 is closed on [insert date of publication in the Federal Register].

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Further NRC action on the issues raised by this petition will be accessible at the Federal rulemaking portal, <http://www.regulations.gov>, by searching on rulemaking docket ID: NRC-2007-0012. The NRC also tracks all rulemaking actions in the “NRC Regulatory Agenda: Semiannual Report (NUREG-0936).”

NRC’s Public Document Room (PDR): The public may examine, and have copied for a fee, publicly available documents at the NRC’s PDR, Public File Area O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC’s Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1-800-387-4209 or 301-415-4737, or by e-mail to [PDR.resource@nrc.gov](mailto:PDR.resource@nrc.gov).

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Reactor Regulation, NRC, Washington, DC 20555-0001, telephone 301-415-3092, e-mail [Harry.Tovmassian@nrc.gov](mailto:Harry.Tovmassian@nrc.gov).

SUPPLEMENTARY INFORMATION:

### The Petition

On February 23, 2007, the NRC received a petition for rulemaking from Mr. David Lochbaum on behalf of POGO and UCS (PRM-50-83). The petitioner requested that the NRC amend its regulations in Title 10 of the *Code of Federal Regulations*, Part 50, "Domestic Licensing of Production and Utilization Facilities" (10 CFR Part 50), to add an appendix (or comparable regulation), similar to existing Appendix E to 10 CFR Part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities," which would require periodic demonstrations by local, State, and Federal entities to ensure that nuclear power plants can be adequately protected against radiological sabotage by adversaries with capabilities that exceed those in the DBT. In the *Federal Register* of March 29, 2007 (72 FR 14713), the NRC published a notice of receipt of the petition for rulemaking and requested public comment.

In support of the request for this proposed amendment to the NRC's regulations, the petitioner cites the recent DBT final rule (72 FR 12705; March 19, 2007) which states that the DBT rule reflects the Commission's determination of the most likely composite set of adversary features against which a private security force should reasonably be required to defend. The petitioner states that the final DBT rule requires plant owners to demonstrate periodically that they can meet their responsibilities to adequately protect nuclear power plants from sabotage threats up to and including the DBT but fails to include provisions requiring periodic demonstrations that applicable local, State, and Federal entities can meet their responsibilities to adequately protect nuclear power plants from sabotage threats by adversaries with capabilities exceeding those of the DBT. The petitioner urges the NRC to remedy this shortcoming by amending its regulations to require demonstrations similar to those required by Appendix E to 10 CFR Part 50, which the petitioner claims requires plant owners and external authorities to demonstrate periodically their

ability to meet their responsibilities during nuclear plant emergencies. According to the petitioner, Appendix E to 10 CFR Part 50 requires biennial exercises at each nuclear plant site and evaluation by the Federal Emergency Management Agency (FEMA) of the performance of local, State, and Federal entities.

#### Public Comments

The notice of receipt of the petition for rulemaking invited interested persons to submit their comments. The NRC received 16 comment letters (1 from the Nuclear Energy Institute (NEI) on behalf of the nuclear energy industry, 13 from NRC-licensed power reactor operators or their affiliates, and 2 from private citizens). In its letter, NEI recommends that the NRC deny the petition. According to NEI, the U.S. Department of Homeland Security (DHS), through the Homeland Security Presidential Directive - 7, "Critical Infrastructure Identification, Prioritization, and Protection," is responsible for the oversight and coordination of local, State, and Federal entities for all terrorist threats including those above the DBT. In addition, the commenter states that the NRC has acknowledged in the Statement of Considerations for the recent DBT final rule that the NRC and DHS are working together to develop and improve emergency preparedness for a terrorist attack through Federal initiatives such as comprehensive review programs and integrated response planning efforts. For these reasons, NEI recommends that the NRC deny this petition. All 13 comment letters from the nuclear power reactor industry endorse the NEI comments.

The Commission agrees that oversight and coordination of local, State, and Federal entities are under the purview of DHS and that the NRC and DHS continue to undertake joint comprehensive review programs and integrated response planning efforts.

One individual commenter, opposing the petition, also questions the NRC's authority to require participation in demonstrations by local, State, and Federal entities. This commenter's argument is essentially the same as that of NEI. This commenter also states that the proposed requirement is too vague in that it does not define how far beyond the DBT adequate protection should be demonstrated. With respect to the specificity of the petition, the NRC concurs that it would be difficult to construct criteria defining levels beyond the DBT for which demonstrations would be required. However, the question is moot because the NRC lacks the authority to require the demonstrations in the first place. Another individual commenter presents a discussion that generally does not address the elements of the petition. This commenter states that demonstrations of the capability of Federal authorities to "take-back-the-plant" might be needed but adds that the adversary has easier and more effective means of achieving radiological sabotage than physical takeover of a plant. While this may be true, the Commission believes that this argument has no bearing on the merits of the petition.

#### Reason for Denial

In December 1979, the President directed FEMA to assume lead federal responsibility for all offsite nuclear emergency planning and response. Homeland Security Presidential Directive - 7, "Critical Infrastructure Identification, Prioritization and Protection," assigns the lead role for coordinating offsite security responses to DHS. The NRC's cooperation in these planning and response activities is a factor in the NRC's determination that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, whether or not the event is the result of sabotage.

In addition, the petitioner has misinterpreted Appendix E to 10 CFR Part 50. The petitioner states that “Appendix E to 10 CFR part 50 currently requires periodic demonstrations that plant owners and external authorities can successfully meet their responsibilities during nuclear plant emergencies....” Appendix E requires nuclear power reactor licensees to involve in emergency preparedness demonstrations the offsite authorities having a role in the emergency preparedness plan. Section IV.F.2.h of Appendix E and 10 CFR 50.47(c) recognize that local and State entities are at liberty to refuse to participate. Further, the NRC does not have the authority to require offsite federal agencies to participate in a nuclear power reactor licensee’s exercises. Thus, the petitioner’s reliance on Appendix E to 10 CFR Part 50 to support the request that the NRC require local, State, and Federal governments to participate in demonstrations of their capability to respond to beyond-DBT events is misplaced because the NRC cannot compel local, State, or Federal entities to take part in biennial emergency exercises if those entities do not choose to participate in emergency planning activities.

For these reasons, the Commission finds that promulgating the petitioner’s proposed requirements would exceed the NRC’s authority and is denying PRM-50-83.

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

For the Nuclear Regulatory Commission

Annette L. Vietti-Cook,  
Secretary of the Commission.